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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/596,445

06/14/2006

Susan Nicola Pieterse

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BRUCE E. LILLING  
LILLING & LILLING PLLC  
P.O. BOX 560  
GOLDEN BRIDGE, NY 10526

EXAMINER

MIGGINS, MICHAEL C

ART UNIT

PAPER NUMBER

1794

NOTIFICATION DATE

DELIVERY MODE

03/26/2008

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

bruce@lilling.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/596,445	<b>Applicant(s)</b> PIETERSE, SUSAN NICOLA	
	<b>Examiner</b> Michael C. Miggins	<b>Art Unit</b> 1794	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 14 June 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |                                                                                      |                                                                   |
|--------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____                                                          | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 4-5 and 7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 7 recites the limitation "appropriate material" which is indefinite because one of ordinary skill can not readily envisage the metes and bounds of the claim because said limitation is undefined.

3. Claim 4 recites the limitation "the breathable region" in line 1. There is insufficient antecedent basis for this limitation in the claim.

4. Claim 5 recites the limitation "the pitch" in line 1. There is insufficient antecedent basis for this limitation in the claim.

### ***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1 and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Watkins (US 4878765).

Watkins discloses a pack suitable for housing at least one of a liquid content or solid-liquid contents (column 10, lines 49-64), said pack comprising a wall with a layer of board (column 10, lines 3-48), an inner layer sufficiently impermeable to create a seal between said layer of board and said pack's contents (column 10, lines 49-64), and an outer protective layer covering said board, wherein said pack's layers are microwavable and said outer layer is breathable, or contains a breathable region(s) (column 10, lines 3-48).

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 2-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Watkins (US 4878765) in view of Quick et al. (US 4757940).

Watkins fails to disclose wherein said outer layer is a varnish and said pack incorporates a further layer between said varnish layer and said board which is of ink and which is breathable, wherein said pack incorporates a breathable region which is substantially limited to the ink layer area.

Quick discloses wherein said outer layer is a varnish and said pack incorporates a further layer between said varnish layer and said board which is of ink and which is breathable, wherein said pack incorporates a breathable region which is substantially

limited to the ink layer area (column 1, lines 5-10 and see Example 5, since ink is gas permeable and ink is far more permeable to gases than a varnish) for the purpose of providing a container which is resistant to browning, discoloration and flaming and provides decorative effects.

Therefore it would have been obvious to have provided wherein said outer layer is a varnish and said pack incorporates a further layer between said varnish layer and said board which is of ink and which is breathable, wherein said pack incorporates a breathable region which is substantially limited to the ink layer area in Watkins in order to provide a container which is resistant to browning, discoloration and flaming and provides decorative effects as taught or suggested by Quick.

9. Claims 4-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Watkins (US 4878765) in view of Lin (US 7077923).

Watkins fails to disclose wherein a breathable region comprises perforations.

Lin discloses a microwavable container which container perforations in the outer layer (column 3, lines 13-25, column 4, lines 42-65, column 5, lines 47-62, column 7, lines 34-60) in order to provide improved venting of gases.

Therefore it would have been obvious to one of ordinary skill in the art at the applicants invention was made to have provided wherein a breathable region comprises perforations in Watkins in order to provide improved venting of gases as taught or suggested by Lin.

Neither reference discloses applicant's recited ranges for perforation spacing and pitch, nor the shape of the perforations. However, finding the workable or optimum range, value or shape is obvious and well within level of one of ordinary skill in the art, absent clear and convincing evidence of unexpected results (MPEP 2144). It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to have provided applicant's recited ranges for perforation spacing and pitch, nor the shape of the perforations in order to provide improved venting of gases especially since Lin discloses that spacing and shape of the perforations can be tailored towards the end use (column 5, lines 47-62).

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael C. Miggins whose telephone number is 571-272-1494. The examiner can normally be reached on 1:00-10:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached on 571-272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1794

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michael C. Miggins/  
Primary Examiner, Art Unit 1794

MCM  
March 17, 2008